THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.14439 OF 2006

DATED:14-07-2006

BETWEEN

K.S.B.Ali

… Petitioner

and

The State of A.P., rep.by its Chief Secretary,
Secretariat Buildings, Hyderabad and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.14439 OF 2006

ORDER:

The petitioner seeks a writ of Mandamus declaring the action of the seventh respondent in conducting public auction to sell Acs.100.00 of land in Kokapet village, Rajendranagar Mandal of Ranga Reddy District, as illegal and arbitrary.

The petitioner claims that he and a large number of persons (203) persons are legal heirs of one Nawab Nusrat Jung Bahadur-I. The said Nawab had allegedly purchased land admeasuring Acs.1,635.34 guntas in Kokapet village of Rajendranagar Mandal under registered sale deed in 1852 AD, which was verified by the Court of Nazim Atiyat. After death of Nawab Nusrat Jung Bahadur-I childless, his two first cousins, namely Nawab Gulam Hussain and Nawab Mohd. Saddar succeeded to the property. The property was in possession of Smt.Rahimunnisa Begum, wife of Nawab Nusrat Jung Bahadur. In January, 1916, the property was taken over by the private secretariat (Sarf-E-Khas Mubarak) for supervision. Therefore, Court of Nizamat-E-Atiyat took up succession enquiry under A.P. (Telangana Area) Atiyath Enquiries Act, 1952, which declared on 15.02.1954, the successors of the original Nawab are entitled to the property. This was also allegedly approved by the then Revenue Minister in a note, dated 24.12.1954. Some of the legal heirs, however, filed W.P.No.227 of 1960 feeling aggrieved by the Government Order refusing to amend the decree of Atiyath Court for incorporating the details of the trees standing on the lands. This Court allowed the same on 01.04.1963

declaring the legal heirs of the Nawab as owners of the land. In spite of all this, the Government of Andhra Pradesh issued Memo, dated 21.05.2005 and orders in G.O.Ms.No.8033, dated 06.06.2005 annulling the orders of Atiyath Court. The petitioner and others filed W.P.No.20298 of 2003 seeking implementation of Munthakab No.57 of 1955 (the letter of grant) and the same was disposed of by this Court directing the Government to take further action in accordance with law. In pursuance thereof, the second respondent issued an order informing that the proceedings of Atiyath Court cannot be implemented as the same is without jurisdiction. Subsequently, the Government of Andhra Pradesh issued G.O.Ms.No.8033, dated 06.06.2005, prohibiting registration of sale deeds in respect of the subject land and subsequently allotted the land to the seventh respondent. It is alleged that the seventh respondent issued a publication in the newspapers on 27.06.2006 proposing to conduct public auction of lands in Kokapet village. Aggrieved by this, the present writ petition is filed.

Sri V.Raja Gopal Reddy, learned counsel, representing Sri K.Ravinder Reddy, learned counsel for the petitioner, submits that after death of Rahimunnisa Begum, wife of Nawab Nusrat Jung Bahadur, the Court of Atiyath constituted under Atiyath Enquiries Act declared the petitioner and a large number of persons as legal heirs and successors of Nawab to succeed to the property in Kokapet village. At one point of time, the same was also accepted by the Government. Therefore, the respondents 1 and 2 cannot claim the property unilaterally nullifying the Judgments of duly constituted Court. Secondly, he would contend that the transfer of land by the first respondent to the seventh respondent as illegal and without due process of law and that the petitioner cannot be deprived of his right to the property or claim compensation to the property. Lastly, he submits that the petitioner filed W.P.No.10084 of 2006 seeking a direction to the State Government; the Chief Commissioner of Land Administration; the District Collector, Ranga Reddy District; the Revenue Divisional Officer, Chevella and the Mandal Revenue Officer, Rajendranagar to survey, demarcate the land admeasuring Acs.719.00 out of total extent of Acs.1,635.34 guntas as per the Munthakab, handover the said land and pay compensation for the remaining land, and that this Court passed orders on 01.06.2006 observing that any steps taken by the respondents therein shall be subject to further orders. The learned counsel would urge that when the dispute is being agitated before this court, it was improper for the seventh respondent to go ahead with the action of the lands. **Per contra**, learned Assistant Government Pleader for Revenue (General) has obtained instructions from the sixth respondent. He submits that

as per the revenue records, land in survey No.109, admeasuring Acs.63.37 guntas is classified as Gairan Sarkari (Government land) and that as per the directions of the fourth respondent, vide letter dated 05.07.2006, the land has been handed over to HUDA for conducting auction. Accordingly, the possession was handed over after physically verifying the land. He also submits that there are no encroachments in the land and that except for some bush growth, no cultivation is being taken up. He also submits that if the petitioner disputes the title of the Government and sets up title himself, he has to seek remedy in the civil Court.

After perusing the lengthy affidavit and some of the documents to which the attention of this Court is invited, two things become clear. First, the claim of the petitioner and similarly placed legal heirs of Nawab Nusrat Jung Bahadur, has not been accepted by the Government of Andhra Pradesh, whatever be the reason for such rejection of the claim of the petitioner and others. Secondly, the land has been already handed over to HUDA (seventh respondent) for the purpose of developing industrial/commercial plots for Information Technology Industry (as informed by learned standing counsel for HUDA). This will leave to an inference that there is a dispute of title between the petitioner on one side and the Government and HUDA on the other side. The question, therefore, is, in such an event, the writ petition is maintainable or what is the proper remedy for seeking redressal by the petitioners.

It is now axiomatic that in a proceeding under Article 226 of Constitution of India, an enquiry into the question of title to the immovable property, cannot be taken up for it involves recording and appreciation of evidence. A writ proceeding being summary in nature, therefore, is not suited for resolving the dispute of title to immovable property. A reference may be made to the judgments of the Supreme Court in **State of Rajasthan v Bhawani Singh**[1], **Mohan Pandey v Usha Rani Rajgaria**[2] and **Dwarka Prasad Agarwal v B.D.Agarwal**[3]**.** In the recent judgment of the apex Court in **Dwarka Prasad Agarwal** (supra), it was held:

> A writ petition is filed in public law remedy. The High Court while exercising a power of judicial review is concerned with illegality, irrationality and procedural impropriety of an order passed by the State or a statutory authority. Remedy under Art.226 of the Constitution of India cannot be invoked for resolution of a private law dispute as contra distinguished from a dispute involving public law character. It is also well-settled that a writ remedy is not available for resolution of a

> property or a title dispute. Indisputably, a large number of private disputes between the parties and in particular the question as to whether any deed of transfer was effected in favour of M/s.Writer and Publishers Pvt. Ltd. as also whether a partition or a family settlement was arrived or not, were pending adjudication before the Civil Courts of competent jurisdiction. The reliefs sought for in the writ petition primarily revolved round the order of authentication of the declaration made by one of the respondents in terms of the provisions of the said Act. The writ petition, in the factual matrix involved in the matter, could have been held to be maintainable only for that purpose and no other.

The petitioner has already filed a writ petition seeking a direction to the revenue officials to conduct survey and handover possession of the remaining land and pay compensation to the land, which was allegedly utilized by the Government and Government bodies. That itself cannot be a ground for entertaining the writ petition, in which the core question is whether the petitioner has a title to the property or not. Therefore, this Court is not inclined to go into the merits of the case. Liberty is given to the petitioner to approach the civil Court and obtain appropriate declaration and injunction. The observations made hereinabove shall not in any manner influence the decision of this civil Court.

The writ petition is accordingly dismissed. No costs.

(V.V.S.RAO,J)

14.07.2006
pln

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[1] AIR 1992 SC 1016

[2] AIR 1993 SC 1225

[3] AIR 2003 SC 2686 = 2003 AIR SCW 3346